

REMARKS

Reconsideration is requested.

Claims 93-95 and 105-111 have been canceled, without prejudice.

Claims 53-92 and 96-104 are pending.

Claim 103 has been revised, without prejudice, to specify that the stabiliser is applied directly to the dairy product prior to fermentation. Support for the amendment is believed to be found throughout the specification. No new matter has been added.

The Section 103 rejection of claims 93-95 and 105-111 over Gudnason (U.S. Patent No. 4,391,830) and Takahashi (EP 1206909) is moot in view of the above.

The Section 103 rejection of claims 53-103 and 111 over Tamime ((1985) Yoghurt Science and Technology, Pergamon Press, New York, pages 18, 25, 26, 60, 103, 104, 111, 145, 146, 235-238, 241-243, 255 and 256 (hereinafter R1)), in view of Yamaguchi (EP 0868854 (hereinafter R2)) and Takahashi (EP 1206909 (hereinafter R3)), is traversed. Reconsideration and withdrawal of the rejection are requested in view of the following distinguishing comments.

The applicants believe that R1 discloses processes for the production of fermented milk including yoghurt, yoghurt beverage, stirred yoghurt and the like. The process outlined on page 236 of R1 discloses the addition of sugar and/or stabilisers to milk, followed by homogenization, heat treatment and inoculation with a starter culture. Table 2.9 on page 26 discloses that low methoxy pectins may be used as a stabiliser. However, there is no teaching or suggestion that depolymerised pectin could be used as an alternative stabiliser.

The Examiner has asserted that the use of depolymerised pectin in the process of R1 would have allegedly been obvious in the light of R2 and/or R3. The applicants respectfully disagree and urge consideration of the following distinguishing comments in this regard.

The applicants submit that R2 discloses a low molecular weight pectin which has a high solubility and a low viscosity, as well as foods and drinks containing low molecular pectin (page 2, lines 25 to 27). R2 further discloses that food and drink containing such low molecular pectins exhibit improved physical properties and an improved palate compared to products containing conventional pectins (page 5, lines 2 to 4). However, there is no teaching or suggestion in R2 that would have motivated one of ordinary skill in the art to have incorporated the low molecular weight pectin disclosed therein into fermented dairy products. Instead, the teachings of R2 are limited to using the low molecular weight pectin in apple juice, hard candy or bread.

The ordinarily skilled person would not therefore have considered combining the teachings of R2 with R1 because R2, for example, is not concerned with dairy products.

Nor would the ordinarily skilled person have found any further guidance in R3 to have made the presently claimed invention. R3 discloses acidic protein foods containing "low molecularized" pectin and processes for the production of such acidic protein foods (page 2, lines 48 to 56). The low molecularized pectins may be obtained by any known chemical or physical treatment capable of lowering the degree of polymerization of the pectin (see page 3, lines 1 to 2). The examples of R2 disclose the addition of low

molecularized pectin to a milk containing composition (see, for example, Tables 1 and 4). However, R3 does not disclose or suggest a process in which depolymerised pectin is added as a stabiliser to a food material comprising a milk protein prior to fermentation. While lactic acid bacterial beverages and fermented milk are given as examples of the acidic protein foods of R3 (page 4, lines 10 to 11), no examples are provided which teach the fermentation step. In contrast, the examples merely teach the addition of low molecularized pectin to milk.

One of ordinary skill will understand from R3 that the low molecularized pectin is simply added to the acidic protein food. Accordingly, where the acidic protein food is a lactic acid bacterial beverage or fermented milk, the skilled person would understand that the low molecularized pectin is added after the fermentation step and there is no teaching or suggestion of the presently claimed invention in the cited art.

Accordingly, on reading R1, the ordinarily skilled person would not have found any further motivation in R3 that would have encouraged them to substitute the stabiliser of R1 with a depolymerised pectin. The ordinarily skilled person would not have reasonably expected that using depolymerised pectin as a stabiliser would avoid phase separation when added to a protein containing food material prior to fermentation (see page 10, lines 19 to 22 of the present specification).

The claims are submitted to be patentable over the cited combination of art.
Withdrawal of the Section 103 rejection is requested.

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The claims are submitted to be in condition for allowance and a Notice to that effect is requested. The Examiner is requested to contact the undersigned, preferably by telephone, in the event anything further is required in this regard.

Respectfully submitted,

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